



## Senator Feinstein Concerned over Resignations of at Least Seven U.S. Attorneys Across the Country

- Senator Feinstein to question Attorney General Gonzalez  
at Judiciary Committee Hearing later this week -

January 16, 2007

**Washington, DC** – *In a speech on the Senate Floor, U.S. Senator Dianne Feinstein (D-Calif.) today expressed concern about the fact that a number of U.S. Attorneys have been asked by the Department of Justice to resign their positions prior to the end of their terms and without cause.*

*In a little noticed provision included in the Patriot Act reauthorization last year, the Administration's authority to appoint interim U.S. Attorneys was greatly expanded. The law was changed so that if a vacancy arises the Attorney General may appoint a replacement for an indefinite period of time – thus completely avoiding the Senate confirmation process*

*Senators Feinstein, Patrick Leahy (D-Vt.), and Mark Pryor (D-Ark.) last week introduced the Preserving United States Attorney Independence Act, which would prevent further circumvention of the Senate's constitutional prerogative to confirm U.S. Attorneys and restore appointment authority to the appropriate District Courts.*

*The full text of Senator Feinstein's floor statement follows.*

*Recent newspaper articles have detailed the circumstances surrounding the departure of several U.S. Attorneys across the country:*

- **Politicizing Prosecutors:** “United States attorneys are so powerful that their impartiality must be beyond question. One way to ensure that is to require them to submit to questions from the Senate, and face a confirmation vote.” *New York Times* – 1/15/07.  
[www.nytimes.com/2007/01/15/opinion/15mon2.html?\\_r=1&oref=slogin](http://www.nytimes.com/2007/01/15/opinion/15mon2.html?_r=1&oref=slogin)
- **U.S. Attorney Vacancies Spark Concerns:** “As the Bush administration enters its last two years, a number of U.S. attorneys are departing, causing concern that some high-profile prosecutions may suffer. As many as seven U.S. attorneys. . . are leaving or being pushed out.” *Wall Street Journal* – 1/16/07.  
[http://online.wsj.com/google\\_login.html?url=http%3A%2F%2Fonline.wsj.com%2Farticle%2F%2FSB116891552371177295.html%3Fmod%3Dgooglenews\\_wsj](http://online.wsj.com/google_login.html?url=http%3A%2F%2Fonline.wsj.com%2Farticle%2F%2FSB116891552371177295.html%3Fmod%3Dgooglenews_wsj)

- **Lam is Asked to Step Down:** “The Bush administration has quietly asked San Diego U.S. Attorney Carol Lam, best known for her high-profile prosecutions of politicians and corporate executives, to resign her post, a law enforcement official said.” *San Diego Union Tribune* – 1/12/07.  
[http://weblog.signonsandiego.com/uniontrib/20070112/news\\_1n12lam.html](http://weblog.signonsandiego.com/uniontrib/20070112/news_1n12lam.html)
- **Nevada U.S. Attorney Given Walking Papers:** “The Bush administration has forced Daniel Bogden out of his position as U.S. attorney for the District of Nevada, Nevada's two senators said Sunday.” *Las Vegas Review Journal* – 1/16/07.  
[www.reviewjournal.com/lvrj\\_home/2007/Jan-15-Mon-2007/news/11980257.html](http://www.reviewjournal.com/lvrj_home/2007/Jan-15-Mon-2007/news/11980257.html)

*The following is a transcript of Senator Feinstein's floor speech:*

**“Mr. President, I have introduced an amendment on this bill which has to do with the appointment of U.S. Attorneys. This is also the subject of the Judiciary Committee's jurisdiction, and since the Attorney General himself will be before that committee on Thursday, and I will be asking him some questions, I speak today in morning business on what I know so much about this situation.**

**Recently, it came to my attention that the Department of Justice has asked several U.S. Attorneys from around the country to resign their positions -- some by the end of this month -- prior to the end of their terms not based on any allegation of misconduct. In other words, they are forced resignations.**

**I have also heard that the Attorney General plans to appoint interim replacements and potentially avoid Senate confirmation by leaving an interim U.S. Attorney in place for the remainder of the Bush administration.**

**How does this happen? The Department sought and essentially was given new authority under a little known provision in the PATRIOT Act Reauthorization to appoint interim appointments who are not subject to Senate confirmation and who could remain in place for the remainder of the Bush administration.**

**To date, I know of at least seven U.S. Attorneys forced to resign without cause, without any allegations of misconduct. These include two from my home State, San Diego and San Francisco, as well as U.S. Attorneys from New Mexico, Nevada, Arkansas, Texas, Washington and Arizona.**

**In California, press reports indicate that Carol Lam, U.S. Attorney for San Diego, has been asked to leave her position, as has Kevin Ryan of San Francisco. The public response has been shock. Peter Nunez, who served as the San Diego U.S. Attorney from 1982 to 1988, has said, ‘This is like nothing I’ve ever seen in my 35-plus years.’**

**He went on to say that while the President has the authority to fire a U.S. Attorney for any reason, it is ‘extremely rare’ unless there is an allegation of misconduct.**

**To my knowledge, there are no allegations of misconduct having to do with Carol Lam. She is a distinguished former judge. Rather, the only explanation I have seen are concerns that were expressed about prioritizing public corruption cases over smuggling and gun cases.**

**The most well-known case involves a U.S. Attorney in Arkansas. Senators Pryor and Lincoln have raised significant concerns about how "Bud" Cummins was asked to resign and in his place the administration appointed their top lawyer in charge of political opposition research, Tim Griffin. I have been told Mr. Griffin is quite young, 37, and Senators Pryor and Lincoln have expressed concerns about press reports that have indicated Mr. Griffin has been a political operative for the RNC.**

**While the administration has confirmed that 5 to 10 U.S. Attorneys have been asked to leave, I have not been given specific details about why these individuals were asked to leave. Around the country, though, U.S. Attorneys are bringing many of the most important and complex cases being prosecuted. They are responsible for taking the lead on public corruption cases and many of the antiterrorist efforts in the country. As a matter of fact, we just had the head of the FBI, Bob Mueller, come before the Judiciary Committee at our oversight hearing and tell us how they have dropped the priority of violent crime prosecution and, instead, are taking up public corruption cases; ergo, it only follows that the U.S. Attorneys would be prosecuting public corruption cases.**

**As a matter of fact, the rumor has it -- and this is only rumor -- that U.S. Attorney Lam, who carried out the prosecution of the Duke Cunningham case, has other cases pending whereby, rumor has it, Members of Congress have been subpoenaed. I have also been told that this interrupts the flow of the prosecution of these cases, to have the present U.S. attorney be forced to resign by the end of this month.**

**Now, U.S. Attorneys play a vital role in combating traditional crimes such as narcotics trafficking, bank robbery, guns, violence, environmental crimes, civil rights, and fraud, as well as taking the lead on prosecuting computer hacking, Internet fraud, and intellectual property theft, accounting and securities fraud, and computer chip theft.**

**How did all of this happen? This is an interesting story. Apparently, when Congress reauthorized the PATRIOT Act last year, a provision was included that modified the statute that determines how long interim appointments are made. The PATRIOT Act Reauthorization changed the law to allow interim appointments to serve indefinitely rather than for a limited 120 days. Prior to the PATRIOT Act Reauthorization and the 1986 law, when a vacancy arose, the court nominated an interim U.S. Attorney until the Senate confirmed a Presidential nominee. The PATRIOT Act Reauthorization in 2006 removed the 120-day limit on that appointment, so now the Attorney General can nominate someone who goes in without any confirmation hearing by this Senate and serve as U.S. Attorney for the remainder of the President's term in office. This is a way, simply stated, of avoiding a Senate confirmation of a U.S. Attorney.**

**The rationale to give the authority to the court has been that since district court judges are also subject to Senate confirmation and are not political positions, there is greater likelihood that their choice of who should serve as an interim U.S. Attorney would be chosen based on merit and not manipulated for political reasons. To me, this makes good sense.**

**Finally, by having the district court make the appointments, and not the Attorney General, the process provides an incentive for the administration to move quickly to appoint a replacement and to work in cooperation with the Senate to get the best qualified candidate confirmed.**

**I strongly believe we should return this power to district courts to appoint interim U.S. Attorneys. That is why last week, Senator Leahy, the incoming Chairman of the Judiciary Committee, the Senator from Arkansas, Senator Pryor, and I filed a bill that would do just that. Our bill simply restores the statute to what it once was and gives the authority to appoint interim U.S. Attorneys back to the district court where the vacancy arises.**

**I could press this issue on this bill. However, I do not want to do so because I have been saying I want to keep this bill as clean as possible, that it is restricted to the items that are the purpose of the bill, not elections or any other such things. I ought to stick to my own statement.**

**Clearly, the President has the authority to choose who he wants working in his administration and to choose who should replace an individual when there is a vacancy. But the U.S. Attorneys' job is too important for there to be unnecessary disruptions, or, worse, any appearance of undue influence. At a time when we are talking about toughening the consequences for public corruption, we should change the law to ensure that our top prosecutors who are taking on these cases are free from interference or the appearance of impropriety. This is an important change to the law. Again, I will question the Attorney General Thursday about it when he is before the Judiciary Committee for an oversight hearing.**

**I am particularly concerned because of the inference in all of this that is drawn to manipulation in the lineup of cases to be prosecuted by a U.S. Attorney. In the San Diego case, at the very least, we have people from the FBI indicating that Carol Lam has not only been a straight shooter but a very good prosecutor. Therefore, it is surprising to me to see that she would be, in effect, forced out, without cause. This would go for any other U.S. Attorney among the seven who are on that list.**

**We have something we need to look into, that we need to exercise our oversight on, and I believe very strongly we should change the law back to where a Federal judge makes this appointment on an interim basis subject to regular order, whereby the President nominates and the Senate confirms a replacement”**